

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANGEL ITURBE-GONZALEZ,

Petitioner,

v.

FCI MENDOTA WARDEN,

Respondent.

Case No. 1:23-cv-00178-CDB (HC)

ORDER DIRECTING CLERK OF COURT TO
CLOSE CASE AND ADJUST THE DOCKET TO
REFLECT VOLUNTARY DISMISSAL
PURSUANT TO RULE 41(a)(1)(A)(i) OF THE
FEDERAL RULES OF CIVIL PROCEDURE

(Doc. 22)

Petitioner Angel Iturbe-Gonzalez, (“Petitioner”) is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 on February 6, 2023. (Doc. 1). Petitioner challenges BOP policy 5410.01, which “excludes eligible inmates including Petitioner from applying First Step Act (“FSA”) earned time credits on the basis of having a detainer.” *Id.* at 2. On September 13, 2023, Respondent filed a motion to dismiss. (Doc. 19). Petitioner did not file a response to Respondent’s motion to dismiss. On October 10, 2023, the Undersigned issued findings and recommendations to grant Respondent’s motion to dismiss and to dismiss the petition. (Doc. 21).

On October 25, 2023, Petitioner filed a motion to withdraw his petition. (Doc. 22). Petitioner notes he has been awarded 365 days of earned time credits toward his release date and moves the Court to dismiss the petition without prejudice.

Pursuant to Federal Rule of Civil Procedure 41(a)(1), a “plaintiff may dismiss an action without a court order by filing ... a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). Once a dismissal under Rule 41(a)(1) is properly filed, no order of the court is necessary to effectuate dismissal; the dismissal is effective automatically. *Commercial Space Mgmt. Co. v. Boeing Co.*, 193 F.3d 1074, 1078 (9th Cir. 1999).

Given Petitioner’s expression of intent to terminate the action, the Undersigned shall construe Petitioner’s motion as a notice of voluntary dismissal. Accordingly, it is HEREBY ORDERED:

1. The October 10, 2023, findings and recommendations (Doc. 21) shall be
WITHDRAWN;
2. Respondent’s motion to dismiss (Doc. 19) is deemed MOOT; and
3. The Clerk of the Court is DIRECTED to CLOSE this case and adjust the docket to reflect voluntary dismissal of this action pursuant to Rule 41(a)(1)(A)(i).

IT IS SO ORDERED.

Dated: October 30, 2023


UNITED STATES MAGISTRATE JUDGE